

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CECIL THOMAS AND JOHN DEAN on
behalf of themselves and all others similarly
situated, 13-cv-2789 (SIL)

Plaintiffs,

v.

TXX SERVICES, INC and PATRICIA
DOUGAN HUNT,

Defendants.

DECLARATION OF DENISE A. SCHULMAN

I, Denise A. Schulman, under penalty of perjury, affirm as follows:

1. My name is Denise A. Schulman. I am partner at Joseph & Kirschenbaum LLP (“JK”), Plaintiffs’ counsel in the above-referenced action. I am familiar with the facts and circumstances set forth herein.
2. Opt-In Plaintiffs Alma Popocol and Solomon Desnoes have not responded to Defendants’ discovery requests.
3. On November 29, 2017, the Court ordered them to respond by December 13, 2017, and warned that the penalty for noncompliance could be dismissal of FLSA claims pursuant to Fed. R. Civ. P. 41.
4. Plaintiffs Popocol and Desnoes did not provide responses as ordered by the Court.
5. JK has diligently attempted to obtain discovery from Plaintiffs Popocol and Desnoes.
6. Between May 5, 2017 and November 28, 2017 (*i.e.*, before the Court’s Order compelling discovery from Plaintiffs Popocol and Desnoes), in an effort to obtain discovery from Plaintiffs Popocol and Desnoes, our office (1) attempted to call Plaintiff Popocol and

Plaintiff Desnoes at least 56 times each; (2) mailed Plaintiff Popocol four letters and Plaintiff Desnoes five letters; and (3) sent Plaintiff Popocol nine e-mails and Plaintiff Desnoes 11 e-mails.

7. During that time period, JK staff spoke with Plaintiff Popocol three times and set up two appointments, both of which Plaintiff Popocol missed despite voicemail and e-mail reminders.
8. During the same time period, JK staff spoke with Plaintiff Desnoes once (on June 26, 2017) and set up an appointment which Plaintiff Desnoes missed despite voicemail and e-mail reminders.
9. Between November 29, 2017 and December 27, 2017, our office attempted to call Plaintiff Desnoes 20 times, sent him two letters (each via regular mail, priority mail, and certified mail), and sent him two e-mails.
10. On November 29, 2017, I spoke with Plaintiff Popocol (a Spanish-speaking JK paralegal translated, as Plaintiff Popocol is Spanish-speaking).
11. On that phone call, Plaintiff Popocol indicated that it was difficult for her to get time off from work but made an appointment for December 4, 2017 to provide discovery responses and responsive documents. She also stated her desire to remain in the lawsuit.
12. JK staff left Plaintiff Popocol reminder voicemails on November 30, 2017 and December 1, 2017. However, Plaintiff Popocol did not come to her December 4, 2017 appointment.¹

¹ I do not know why Plaintiff Popocol missed this appointment but presume that it was related to her stated difficulties in taking time off from work.

13. Between December 4, 2017 and December 27, 2017, JK staff attempted to call Plaintiff Popocol 17 times, sent her one letter (via regular mail, priority mail, and certified mail), and sent her two e-mails.
14. Due to the limited contact JK has had with Plaintiffs Popocol and Desnoes, I do not know their precise financial status.
15. However, TXX has produced in discovery a 1099 issued to Plaintiff Desnoes's entity, SJD Trucking, which reflects just \$20,881.20 in 2017 income.² A true and correct copy of this document is attached hereto as Exhibit 1.
16. In this litigation, TXX produced its profit and loss statements. TXX's 2016 profit and loss statement reflects total revenue of approximately \$38 million. A true and correct copy of the page of the profit and loss statement that shows revenue is attached hereto as Exhibit 2.
17. Before Defendants served their motion to dismiss Plaintiffs Popocol and Desnoes, the parties exchanged e-mails regarding the potential dismissal but did not confer by phone. I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
April 24, 2018

/s/ Denise A. Schulman
Denise A. Schulman

² It is my understanding that Plaintiff Popocol has not worked for TXX for several years.

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TXX SERVICES, INC and PATRICIA
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-----x
CERTIFICATE OF SERVICE

I, CARMENLIGGIA ESPINAL, under penalty of perjury, certify as follows:

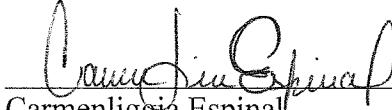
1. I am a paralegal with Joseph & Kirschenbaum LLP, Plaintiffs' counsel in the above-referenced matter.
2. On April 24, 2018, I served a copy of Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss Opt-In Plaintiffs Solomon Desnoes and Alma Popocol, the April 24, 2018 declaration of Denise A. Schulman, and exhibits thereto via United States Postal Service first class mail, postage pre-paid, to

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I certify under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
May 7, 2018



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